

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1510 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PATEL GUNVANTRAY NANDLALBHAI

Versus

CHIEF ENGINEER (MATERIALS) GEB

Appearance:

1. First Appeal No. 1510 of 2002
PARTY-IN-PERSON for Appellant.
MR HEMANG RAVAL with MR AD OZA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 08/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. This appeal under Section 96 of the Civil Procedure Code, 1908 is preferred from the judgment of the learned Civil Judge (S.D.), Bhavnagar in Misc. Civil Application No.240 of 1991 whereby the application of the appellant was dismissed and decree was ordered to be drawn in terms of the award submitted by the Arbitrator. The application of the appellant for setting aside the award has been rejected mainly on the ground that none of the reasons envisaged in Section 30 of the Arbitration Act, 1940 were made out by the appellant; nor were any ground to modify the award under Section 15 made out according to the judgment.

2. The party-in-person refused to have the assistance of any advocate and insisted on arguing his own case. He was heard at length, and the arbitration award, as also, the pleadings produced with the appeal were perused.

3. The facts that could be gathered from the record and submissions of the learned counsel for the GEB are that the appellant had filled up a tender for pre-stressed concrete poles for the area of Idar and Vartej, and upon rejection of the tender, despite the lowest rates, the appellant had filed Civil Suit No.421 of 1984. Initially, ad-interim injunction was granted in the said suit, but it was vacated by order dated 3.5.1984 and the appeal preferred therefrom was also rejected. That suit was ultimately withdrawn and a dispute was referred to the Arbitrator by mutual consent in the year 1989. The Arbitrator has, by the award dated 10.5.1991, rejected the claims of the appellant, and the suit filed by the appellant for challenging the award was dismissed on 18.2.1997. The review application filed by the appellant was also rejected by order dated 26.6.1997. That order having been challenged in a revision application, the Civil Court was directed to pass fresh order after hearing the parties. That is how the original Misc. Civil Application praying to set aside the award came to be dismissed by the impugned judgment dated 29.4.2002.

4. We were taken through the award made in the arbitration proceedings and it was noticed that the appellant had agitated a claim of Rs.33 lakhs. Although there was no dispute that the claimant's tender was the lowest and that it was, rightly or wrongly, rejected, the other issues arising in the matter viz. whether there was a binding contract between the parties, whether the claim was barred by limitation and what was the effect of

the suit filed by the appellant in the Bhavnagar Court and its withdrawal without express permission of the Court were addressed by the Arbitrator and decided against the appellant.

5. The contention of the appellant throughout appears to be that his case and claim was governed by the Law of Torts and the dispute regarding his claim was not decided by the Arbitrator. However, as noted by the Civil Court in the impugned judgment, the grounds for setting aside the award are restricted by Section 30 of the Arbitration Act, 1940, according to which, the award cannot be set aside except where the Arbitrator has misconducted himself or the proceedings, or the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid, or where an award has been improperly procured or is otherwise invalid. None of these grounds were made out by the appellant either before the Civil Court or before this Court. Therefore, despite the observation of the Arbitrator to the effect that there was some truth in the grievance of the claimant that his tenders were wrongly rejected, the award could not be set aside.

6. As against the claim and contentions of the appellant, the respondent had also put forward its case before the Arbitrator and the Arbitrator has considered the rival contentions for arriving at his own conclusion, the merit of which cannot be examined in this appeal at this stage. Therefore, reiterating the following observations made by the sole Arbitrator, we have to reject the appeal as having no substance :-

"The opponent-Board may, if it so desires, compensate the claimant who is agitating this dispute not only for getting money from the Board but to vindicate his honour and save the public money."

7. The appeal is accordingly rejected with no order as to costs.

(M.S. SHAH, J.)

(D.H. WAGHELA, J.)

zgs/-